IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

CRP.No. 425 of 2006(G)

AGAINST THE ORDER DATED 31/3 /06 IN IA 789/06 IN OS.53/2006 of PRL.M.C.KOZHIKODE-I

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REVN. PETITIONER: PLAINTIFF/RESPONDENT IN THE IA:

ABDULLA, S/O. KUNHIPAKKI,
MARUTHOLI HOUSE, MANNUR KAVU,
NADUVANNUR, KOYILANDY TALUK,
KOZHIKODE DISTRICT.

BY ADV. SRI.P.T.MOHANKUMAR
SRI.A.AHZAR

RESPONDENTS: PETITIONERS:

1. THE KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., REPRESENTED BY ITS MANAGING DIRECTOR, THIRUVANANTHAPURAM.

2. THE MANAGER, KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., MAVOOR ROAD, KOZHIKODE.

3. M/S. SHRIRAM INVESTMENTS LTD., SREEPADAM BUILDING, CHEROOTY ROAD, KALATHINKUNNU AMSOM, KOZHIKODE TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.P.SANJAY
SRI.A.PARVATHI MENON

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.3667/06 & 1717/06 IN

DISMISSED

25/1/2007 SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

SHW to Judge.

M.SASIDHARAN NAMBIAR,J.

C.R.P .NO.425 OF 2006

Dated 25th January 2007

O R D E R

Petitioner is plaintiff in O.S.53/06 on the file of Principal Munsiff court, Kozhikod. Respondents are defendants. Suit was filed for rendition of accounts and for permanent prohibitory injunction. Defendants jointly filed I.A.789/06 an application under Section 8 of Arbitration and Conciliation Act, 1996 contending that there is arbitration clause in the agreement executed by petitioner and defendants and therefore civil court has no jurisdiction to entertain the suit. As per order dated 31/3/2006, Munsiff allowed the application and referred the parties to arbitration. This revision petition is filed challenging that order.

2. Learned counsel appearing for petitioner and respondents were heard.

3. Arguments of learned counsel appearing for petitioner is that third respondent is not entitled to seek a reference to arbitration as money is due not

to third respondent but to defendants 1 and 2 and rendition of the account is to be made by defendants 1 and 2 and therefore learned Munsiff should not have allowed the application and it should have been found that civil court has jurisdiction to try the suit.

4. Section 8 of Arbitration and Conciliation Act, 1996 reads;

> "8. Power to refer parties to arbitration where there is an arbitration agreement;- (1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.
>
> (2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.
>
> (3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an

> arbitration may be commenced or continued and an arbitral award made."

Though learned counsel appearing for petitioner vehemently argued that Section 8 has no application to the facts of the case, it is not disputed that there is an agreement entered into by petitioner and respondents. It is also not disputed that in that agreement there is an arbitration clause. I.A.789/06 was filed not by third defendant but by all the defendants, including defendants 1 and 2 to, to whom even according to petitioner, amount is due under the contract. In such circumstance, it cannot be said that respondents are not parties to the arbitration agreement. It is also not disputed that application under Section 8 was filed by them before submitting their first statement, on the substance of the dispute involved in the suit. In such circumstance, learned Munsiff rightly held that case is to be referred to the arbitration. I find no illegality or irregularity in the impugned order.

Revision petition is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.